In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1692

STEVE ANNORENO, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a ten-day jury trial in the Northern District of Illinois, petitioners were convicted of conspiring to make and cause to be made extortionate extensions of credit, in violation of 18 U.S.C. 892(a). They were sentenced to imprisonment ranging from five to fifteen years, and three of them were also fined $10,000 each.

1. Petitioners contend that the courts below misconstrued the statute and indictment and consequent-

ly that they were improperly denied a bill of particulars, that irrelevant and prejudicial evidence was admitted against them without adequate limiting instructions, and that they were convicted on insufficient evidence. These contentions were fully considered and rejected by the court of appeals, upon whose opinion we rely. Petitioners' principal challenge to that opinion is that it construes the statute as proscribing extensions of credit that are merely "usurious" rather than "extortionate" (see Pet. 29). The opinion makes clear, however, that the exorbitantly usurious nature of the loans involved in this case was merely one factor which, together with the other evidence in the case, permitted the jury to find that the petitioners had conspired and agreed to make loans which were intended to be "extortionate"—*i.e.*, "with respect to which it is the understanding of the creditor and the debtor * * * [that failure to pay] could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person" (18 U.S.C. 891(6); see Pet. App. 9-11).

2. Petitioners claim that their conviction was tainted by admittedly illegal electronic eavesdropping which occurred in 1963 and 1964—four years before the investigation which led to the indictment and before making extortionate loans had been made a federal crime. The trial court held an extensive hearing on possible taint and found none (See Pet. App. 14).

The trial court also properly rejected petitioners' contention (Pet. 31) that a trial witness and an in-

formant who directed the FBI to a trial witness were mentioned in the logs of the overheard conversations (R. 195, at 3; see H.Tr. 398-400, 406-408, 602; GHX 19, at 35). The court of appeals correctly held that "the government made full and adequate disclosure of the surveillance" at the five-day taint hearing and that no taint was shown. (Pet. App. 15). The additional disclosure of inter-governmental communications which petitioners sought could have had no relevance to any material issue presented at the hearing and would have constituted the "unlimited license to rummage in the files of the Department of Justice" which this Court refused to sanction in *Alderman* v. *United States*, 394 U.S. 165, 185; see also *United States* v. *Hoffa*, 436 F. 2d 1243, 1247 (C.A. 7), certiorari denied, 400 U.S. 1000; *United States* v. *Mirro*, 435 F. 2d 839, 841 (C.A. 7); *United States* v. *Battaglia*, 432 F. 2d 1115, 1118 (C.A. 7), certiorari denied, 401 U.S. 924.

3. There was no necessity to grant petitioner Milstein an evidentiary hearing on his motion to suppress, which—since the motion was not filed until three days prior to trial—would have necessitated postponement of the trial. The validity of the search pursuant to a warrant and the validity of Milstein's arrest—both for an independent offense—had been established after an evidentiary hearing held in connection with his prosecution for that offense. The trial court here therefore properly treated that determination as *res judicata* on all issues which it decided. Moreover, Milstein did not dispute the factual

allegations in the affidavit the government filed in response to his motion to suppress in this case, and hence the validity of the seizure presented only questions of law which did not require a further evidentiary hearing.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

HENRY E. PETERSEN,
Assistant Attorney General.

BEATRICE ROSENBERG,
MARSHALL TAMOR GOLDING,
Attorneys.

AUGUST 1972.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972 473916 69